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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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|-----------------|-------------|----------------------|---------------------|------------------|

10/586,336

03/16/2007

Antonio Margheritis

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04/28/2010

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SUITE 800

WASHINGTON, DC 20037

EXAMINER

JACYNA, J CASIMER

ART UNIT

PAPER NUMBER

3754

NOTIFICATION DATE

DELIVERY MODE

04/28/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/586,336 | Applicant(s) MARGHERITIS ET AL. | |
| | Examiner J. Casimer Jacyna | Art Unit 3754 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>071406</u> . | 6) <input type="checkbox"/> Other: _____ |

1. The disclosure is objected to because of the following informalities: The specification lacks the headings noted in MPEP 608.01(a).

Appropriate correction is required.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 1, 2, and 9 the phrases "such as" or "in particular" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Also, in claim 7, there is no antecedent basis for "said...cone shaped profile". The antecedent is in claim 6. Additionally, the terms "in particular" in claims 2 and 9 are a broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) which is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74

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(Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 2 and 9 recites the broad recitation fastener element and fastener means, and the claim also recites snap fastening and snap fastener means which is the narrower statement of the range/limitation.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5 and 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by VanBrocklin 5,108,013. VanBrocklin discloses a dispenser device including a pump with an actuator rod 36 and a piston 38, a fluid reservoir at 94, a fastener 16 that attaches to neck 114, a turret 18, a radial flange 104 that deforms at 115 (which is a top edge of the neck) after assembly as shown in figures 1 and 2, the edge flange of 104 curves upwardly as claimed from the bottom flat 104 to 106 at 126, also the projection at 109 tapers to rounded top at 110 which is an upward curve as claimed, and projecting sealing means 109 and 106 with the top of projection 109 being deformed by the shoulder of 16 as seen in figures 1 and 2. In regard to claim 3, 104 is flat on either side of 115 and the bottom of 109 is flat and between the fastener 16 and the neck 114 as seen in figures 1 and 2. In regard to claims 4 and 5, projections 106 and 109 are parallel at shown in figure 5 but 109 is deformed and forms an angle extending toward 106 when assembled as shown in figures 1 and 2. In regard to claim 8, the turret 18

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seals with the actuator rod 36 at 138. In regard to claim 11, the bottom surface of flange 104 forms a sealing zone with the neck at 115 and the upper surface of 104 seals with the fastener 106 at the side of 109, at the deformed top of 109 and at the top of 106.

6. Claims 1-4, 6, 7 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Tada 3,897,006. Tada discloses a dispenser device including a pump with a piston 30, a fluid reservoir at 10, a fastener 20 that attaches to the neck 12 at 24, a turret 18, a radial flange 19 that deforms at 21 on a top edge of the neck 12 after assembly, the flange 19 curves upwardly as claimed at the upward facing or upwardly curved groove 20, and projecting sealing means as is the outer wall of 20 adjacent 16 and the inner wall 18 with projections being deformed by the insertion of 17. In regard to claim 3, 19 is flat along 21 and is between 17 and 12. In regard to claims 6 and 7, 14 and 18 taper in or are cone shaped. In regard to claim 11, the bottom surface of flange 19 forms a sealing zone with the neck at 21 and the outer wall of 20 seals with the fastener 16, groove 20 seals with 17 and wall 18 seals with 14.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-5 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over de Pous 6,672,488 in view of Dutt 4,461,393. Pous discloses a dispenser device including a pump or valve at 14, a fluid reservoir at 3, a fastener 1 that attaches to the

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neck 30 with a snap connection 108 (see claim 9), a turret which is a radial flange 4 that deforms at 35 on a top edge of the neck 30 after assembly substantially as claimed but does not disclose the flange to curve upward or have projecting sealing means.

However, Dutt teaches another seal for a fastener 12 on a reservoir 38 having a curve that curves upwardly as claimed from 32 and 34 to an apex at 36 which is deformed when assembled as shown in figure 2 and projecting sealing means 24, 26, 28 which will deform when inserted into the grooves in 12 for the purpose of improving the sealing capability of the fastener. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the flange 4 of de Pous with a curved flange having projecting sealing means as, for example, taught by Dutt in order to improve the sealing capability of the fastener. In regard to claim 4, it is possible for the projections 24, 26 and 28 to be manufactured so as to be parallel before assembly.

9. Claims 1-5 and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Durliat et al. 6,053,371 in view of Dutt 4,461,393. The embodiment of figures 1-5 of Durliat discloses a dispenser device including a pump with a piston 52 and a rod 50, a fluid reservoir that attaches at 38, a fastener 16 that attaches to the neck at 40, a turret 12 which deforms at 100 and can include deformable material as disclosed on column 2, line 66, to column 3, line 3, the turret has a snap connection 44 (see claim 2) that connects to the fastener 16 and a radial flange 36 substantially as claimed but does not disclose the flange to curve upward or have projecting sealing means. However, Dutt teaches another seal for a fastener 12 on a reservoir 38 having a curve that curves upwardly as claimed from 32 and 34 to an apex at 36 which is deformed when

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assembled as shown in figure 2 and projecting sealing means 24, 26, 28 which will deform when inserted into the grooves in 12 for the purpose of improving the sealing capability of the fastener. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the flange 36 of Durliat with a curved flange having projecting sealing means as, for example, taught by Dutt in order to improve the sealing capability of the fastener. In regard to claim 4, it is possible for the projections 24, 26 and 28 to be manufactured so as to be parallel before assembly. In regard to claim 8, portion 100 of the turret seals against the actuator rod 50.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/
Primary Examiner, Art Unit 3754